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9
10 UNITED STATES DISTRICT COURT
11
12 SOUTHERN DISTRICT OF CALIFORNIA

13 HASHMAT FAIZI,

14 Case No.: '25CV2974 JO MSB

15 Petitioner,

16 v.

17 CHRISTOPHER J. LAROSE, Senior
18 Warden, Otay Mesa Detention Center,
19 San Diego, California;
20 JOSEPH FREDEN, Acting Field Office
21 Director, San Diego Office of Detention
22 and Removal, U.S. Immigrations and
23 Customs Enforcement; U.S. Department
24 of Homeland Security;
TODD M. LYONS, Acting Director,
Immigration and Customs Enforcement,
U.S. Department of Homeland Security;
SIRCE OWEN, Acting Director for
Executive Office for Immigration
Review;
KRISTI NOEM, Secretary, U.S.
Department of Homeland Security;
PAM BONDI, Attorney General of the
United States;

Respondents.

15 PETITION FOR WRIT OF HABEAS
16 CORPUS AND ORDER TO SHOW CAUSE
17 WITHIN THREE DAYS; COMPLAINT
18 FOR DECLARATORY AND INJUNCTIVE
19 RELIEF

20 Agency Doc. No.: A 

1 Petitioner HASHMAT FAIZI petitions this Court for a writ of habeas corpus
2 under 28 U.S.C. § 2241 to remedy Respondents' detaining her unlawfully, and states
3 as follows:

4

5 INTRODUCTION

6 1. Petitioner, HASHMAT FAIZI ("Mr. Faizi" or "Petitioner"), by and through his
7 undersigned counsel, hereby petitions this Court under 28 U.S.C. § 2241, et seq., to
8 issue a Writ of Habeas Corpus ordering Mr. Faizi's release from immigration
9 detention by the Department of Homeland Security, United States Immigration and
10 Customs Enforcement ("ICE"). Mr. Faizi seeks immediate release from custody
11 because Respondents have held him since December 26, 2024—a prolonged
12 period—even though he has hired counsel and has acted diligently to have his
13 asylum application heard by an immigration judge ("IJ"), and his proceedings have
14 been continued through no fault of his own. His continued detention without a
15 hearing as to flight risk and danger to the community violates the U.S. Constitution
16 and federal law.

17

18 CUSTODY

19 2. Mr. Faizi is currently in Respondents' legal and physical custody. They are
20 detaining him at the Otay Mesa Detention Center in San Diego, California. He is
21 under Respondents' and their agents' direct control.

PARTIES

3. Mr. Faizi is a 33-year-old citizen of Afghanistan, born in Bamiyan, Afghanistan and a member of the ethnic minority Tajik group. He is currently detained at the Otay Mesa Detention Center in San Diego, California.

4. Mr. Faizi is currently in Respondents' legal and physical custody at the Otay Mesa Detention Center in San Diego, California. CoreCivic, Inc., a Maryland corporation, operates that facility.

5. Respondent Christopher LAROSE is the Warden of the Otay Mesa Detention Center where Petitioner is being held. Respondent Christopher LaRose oversees the day-to-day operations of the Otay Mesa Detention Center and acts at the Direction of Respondents Freden, Lyons and Noem. Respondent Christopher LaRose is a custodian of Petitioner and is named in his official capacity.

6. Respondent Joseph FREDEN is the Acting Field Office Director of ICE in San Diego, California and is named in his official capacity. ICE is the component of the DHS that is responsible for detaining and removing noncitizens according to immigration law and oversees custody determinations. In his official capacity, he is the legal custodian of Petitioner.

7. Respondent Todd M. LYONS is the Acting Director of ICE and is named in his official capacity. Among other things, ICE is a component of the DHS, 6 U.S.C. § 271, and an “agency” within the meaning of the Administrative Procedure Act, 5 U.S.C. § 701(b)(1). It is the agency responsible for enforcing immigration laws, and it is

1 detaining Mr. Faizi. Respondent Lyons has custodial authority over Mr. Faizi, who
2 names him in his official capacity.

3 8. Respondent Kristi NOEM is the Secretary of the DHS and is named in her
4 official capacity. DHS is the federal agency responsible for enforcing immigration
5 laws and granting immigration benefits. See 8 U.S.C. § 1103(a); 8 C.F.R. § 2.1.
6 Respondent Noem has ultimate custodial authority over Mr. Faizi, who names her in
7 her official capacity.

8 9. Respondent Pam BONDI is the Attorney General of the United States and the
10 most senior official in the U.S. Department of Justice (DOJ) and is named in her
11 official capacity. She is responsible for the Immigration and Nationality Act's
12 implementation and enforcement (see 8 U.S.C. §§ 1103(a)(1), (g)), and oversees the
13 Executive Office for Immigration Review, the office that administers Mr. Faizi's
14 removal proceedings and is responsible for adjudicating Mr. Faizi's asylum
15 application. Mr. Faizi names her in her official capacity.

16 JURISDICTION AND VENUE

17 10. This action arises under the United States Constitution and the
18 Immigration and Nationality Act, 8 U.S.C. § 1101 et seq., INA § 101 et seq., to
19 challenge Mr. Faizi's detention under the INA and any inherent or plenary powers
20 the government may claim to continue holding her.

21 11. This Court has jurisdiction under 28 U.S.C. § 1331, § 2241; 5 U.S.C. §§
22 701-706 (Administrative Procedure Act, "APA"); and the Suspension Clause, U.S.
23
24

1 Const. art. I, § 9, cl. 2, and the Fifth and Eighth Amendments of the United States
2 Constitution. Jurisdiction is not limited by a petitioner's nationality, immigration
3 status, or any other classification. *See Boumediene v. Bush*, 553 U.S. 723, 747
4 (2008). The Court may grant relief under the Suspension Clause; the Fifth and
5 Eighth Amendments; 5 U.S.C. § 706 (APA); and 28 U.S.C. §§ 1361 (Mandamus Act),
6 1651 (All Writs Act), 2001 (Declaratory Judgment Act), and 2241 (habeas corpus).
7

8 12. Specifically, this Court has jurisdiction under 28 U.S.C. § 2241 to review
9 Mr. Faizi's detention. Federal district courts possess broad authority to issue writs
10 of habeas corpus when a person is held "in custody in violation of the Constitution
11 or laws or treaties of the United States" (28 U.S.C. § 2241(c)(3)), and this authority
12 extends to immigration detention challenges that survived the REAL ID Act's
13 jurisdictional restrictions. Because Mr. Faizi seeks the traditional habeas remedy of
14 release from allegedly unlawful detention, his petition presents precisely the type of
15 threshold legality-of-detention question that § 2241 was designed to address. *See*
16 *INS v. St. Cyr*, 533 U.S. 289, 301 (2001); *see also Lopez-Marroquin v. Barr*, 955 F.3d
17 759, 759 (9th Cir. 2020) (citing *Singh v. Holder*, 638 F.3d 1196, 1211-12 (9th Cir.
18 2011)). And federal courts are not stripped of jurisdiction under 8 U.S.C. § 1252.
19 See, e.g., *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001). No court has ruled on the
20 legality of Mr. Faizi's detention.

21 13. Venue is proper in this District under 28 U.S.C. §§ 1391(b)(2) and
22 (e)(1) because a substantial part of the events or omissions giving rise to this claim
23 have happened here, Mr. Faizi is detained here, and his custodian resides here.

Venue is also proper under 28 U.S.C. § 2243 because Mr. Faizi's immediate custodian resides in this District. See *Rumsfeld v. Padilla*, 542 U.S. 426, 451-52 (2004) (Kennedy, J., concurring).

FACTUAL BACKGROUND

14. Mr. Faizi was born in Bamiyan, Afghanistan to ethnic minority Tajik parents. Mr. Faizi and his family were internally displaced when Mr. Faizi was very young due to fighting in his hometown where the Tajiks were targeted by the Hazaras and other ethnic groups. Hazara fighters that belonged to the Wahdat faction of the Mujahedeen invaded, pillaged, and burned Mr. Faizi's family home and village and other Tajik land and homes and desecrated their mosques with their domestic animals and tied their livestock to the mosque buildings.

15. The family was forced to leave the province and had to relocate to Balkh province as other parts of Afghanistan were embroiled in domestic war or were mainly dominated by Pashtuns who were also persecuting Tajiks. Mr. Faizi grew up in Balkh province where he went to primary and high school. After completing high school, in the year 2014, one of Mr. Faizi's friends who already worked as a bodyguard to a local commander who was tied to the then governor of the Balkh province, Atta Muhammad Nur, persuaded Mr. Faizi to apply for the same job.

16. This job was very dangerous as it required Mr. Faizi to accompany this commander to different places, meetings and events, as this commander was an arch enemy of the Taliban and was a prime target for them. This job also heightened

1 Mr. Faizi's profile as he was seen as part of this commander's attaché by the general
2 public which included the Taliban and its sympathizers. Mr. Faizi's friend who had
3 recommended this job to him was later killed and Mr. Faizi's family advised him to
4 leave this kind of work, and he heeded their advice.

5 17. After quitting that job, Mr. Faizi decided to go to Russia and continue
6 his education there. After he finished his studies in Russia and obtained a degree in
7 engineering, Mr. Faizi returned to Afghanistan in May 2023. However, he did not feel
8 safe there because the Taliban was now in charge of the entire country, and they had
9 a very strong power grip over the north, including Balkh province. A week after Mr.
10 Faizi returned to Afghanistan, he was physically attacked and threatened by the
11 Taliban's members of the Ministry for Propagation of Virtue and Prevention of Vice.
12 When Mr. Faizi was going shopping, dressed in shorts and western clothes, not
13 wearing a beard, and listening to music through my headphones, the Taliban
14 stopped him, began cursing at him, calling him a non-believer, and slapped me,
15 accused him of being a non-believer because he was wearing western style clothing,
16 listening to western music and wearing my hair in a western fashion. After Mr. Faizi
17 begged for his life, the Taliban threatened that if they caught him again, the
18 punishment would be very harsh, which he interpreted to be imprisonment, torture
19 and even death. After this incident Mr. Faizi kept a low profile, avoided going
20 shopping or doing other outside activities, and rarely went outside.

21 18. Then in July 2023, Mr. Faizi decided to go for a walk near a shrine. When
22 he was there, he was recognized by an armed Taliban member as a former

1 bodyguard for the local commander and questioned about it. Afraid for his life, he
2 lied to them and insisted that he was not that person. After Mr. Faizi returned home,
3 he decided to flee Afghanistan and returned to Russia. A few days later, the Taliban
4 raided his house searching for him. They later threatened his family and beat up his
5 brother.

6 19. On January 30, 2025, an asylum officer interviewed Mr. Faizi and found
7 him credible and that he had a credible fear of persecution in Afghanistan.

8 20. On February 3, 2025, Respondents issued Mr. Faizi a Notice to Appear,
9 charging him as an alien present in the United States who has not been admitted or
10 paroled.

11 21. Mr. Faizi has not moved for a bond redetermination due to the fact that
12 IJ's have consistently ruled that they do not have jurisdiction to redetermine the
13 conditions of custody over individuals who have been apprehended shortly after
14 entering the United States and who have been processed under Section 235(b)(1)
15 expedited removal statute, and who have been placed in removal proceedings
16 following a positive credible fear determination by an asylum officer.

17 22. On February 18, 2025, Mr. Faizi appeared for his first master calendar
18 hearing, represented by counsel. After taking pleadings in the case, the IJ reset the
19 matter to March 5, 2025, for another master calendar and ordered that Mr. Faizi file
20 his asylum application by that date.

21 23. On February 27, 2025, Mr. Faizi filed his asylum application.

1 24. At his second Master Calendar hearing held on March 5, 2025, the IJ
2 issued a scheduling order setting the matter for an individual hearing on July 10,
3 2025, and setting the deadline for supplemental filings on June 27, 2025.
4

5 25. On June 25, 2025, Mr. Faizi filed his supplemental evidence and
6 prehearing brief and other filings. On the same date, Mr. Faizi's individual merits
7 hearing was reset to August 26, 2025, and the case was reassigned to a different IJ
8 (this IJ is not physically located in Otay Mesa, but instead is located in downtown,
9 San Diego, and conducts detained hearings via video while Respondents and their
10 counsel are present at Otay Mesa and DHS counsel are present in downtown).

11 26. On August 26, 2025, the date set for Mr. Faizi's individual hearing, his
12 counsel was notified by the court clerk that the IJ was not available on that date and
13 that his hearing would be reset to a later date. Mr. Faizi's hearing was then
14 rescheduled to September 4, 2025. However, the IJ had multiple cases scheduled for
15 that morning and Mr. Faizi was only allowed approximately one hour and a half to
16 present his case. However, due to the time restraint, Mr. Faizi's hearing was not
17 completed on that date and the IJ continued his hearing to December 19, 2025,
18 which was the earliest date available on that IJ's calendar.
19

20 27. Mr. Faizi's continued detention without a tenable justification and
21 without a demonstration that removal is significantly likely in the reasonably
22 foreseeable future violates constitutional due process. Zadvydas v. Davis, 533 U.S.
23 678 (2001); Kydyrali v. Wolf, 499 F. Supp. 3d 768 (S.D. Cal. 2020).
24

1 28. The government has failed to effectuate Mr. Faizi's removal within a
2 reasonable period of time or present any evidence that his removal is significantly
3 likely to occur in the reasonably foreseeable future.

4 29. Mr. Faizi's detention without a tenable justification violates his rights
5 under the Due Process Clause of the Fifth Amendment.
6

7 EXHAUSTION OF REMEDIES

8 30. Mr. Faizi has exhausted all administrative remedies, and no further
9 ones are available. Furthermore, for habeas claims, exhaustion of administrative
10 remedies is prudential, not jurisdictional. *Hernandez*, 872 F.3d at 988. A court may
11 waive the prudential exhaustion requirement if "administrative remedies are
12 inadequate or not efficacious, pursuit of administrative remedies would be a futile
13 gesture, irreparable injury will result, or the administrative proceedings would be
14 void." *Id.* (quoting *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004) (citation
15 and quotation marks omitted)). Petitioner asserts that exhaustion should be waived
16 because administrative remedies are (1) futile and (2) his continued detention
17 results in irreparable harm.
18

19 31. Exhausting administrative remedies here is futile because Respondents
20 contend Mr. Faizi is subject to mandatory detention. As such, no request to release
21 him from custody would be considered by ICE. In fact, Mr. Faizi did submit a well-
22 documented request for parole release. However, that request was denied.
23 Moreover, immigration judges in this district claim to have no jurisdiction to
24

1 conduct a custody redetermination hearing as to individuals procedurally situated
2 like Mr. Faizi. Indeed, in contravention to the INA and long-standing precedent and
3 practice, the Board of Immigration Appeals and Attorney General have deemed no
4 noncitizen eligible for bond before an immigration judge (with the exception of only
5 noncitizens who entered the U.S. on a visa). As such, any attempts to exhaust
6 administrative remedies would be entirely futile.
7

8 32. Moreover, no statutory exhaustion requirements apply to Petitioner's
9 claim of unlawful custody in violation of her due process rights, and there are no
10 administrative remedies that she needs to exhaust. *See Am.-Arab Anti-*
11 *Discrimination Comm. v. Reno*, 70 F.3d 1045, 1058 (9th Cir. 1995) (finding
12 exhaustion to be a "futile exercise because the agency does not have jurisdiction to
13 review" constitutional claims); *In re Indefinite Det. Cases*, 82 F. Supp. 2d 1098, 1099
14 (C.D. Cal. 2000) (same).
15

16 33. More importantly, every day that Petitioner remains detained causes
17 him harm that cannot be repaired. His continued detention puts his mental health at
18 greater risk, further warranting a finding of irreparable harm and the waiver of the
19 prudential exhaustion requirement. Mr. Faizi has been suffering from depression
20 and anxiety while in detention, and he has been losing his eyesight which has been
21 getting worse progressively and for which he has been seeking treatment while in
22 detention, and there is no adequate treatment for Mr. Faizi in the detention facility.
23

24 34. The Court must consider this in its irreparable harm analysis of the
effects on Petitioner as his detention continues. *See De Paz Sales v. Barr*, No. 19-CV-

1 07221-KAW, 2020 WL 353465, at *4 (N.D. Cal. Jan. 21, 2020) (noting that the
2 petitioner “continues to suffer significant psychological effects from his detention,
3 including anxiety caused by the threats of other inmates and two suicide attempts,”
4 in finding that petitioner would suffer irreparable harm warranting waiver of
5 exhaustion requirement).

6

7 **FIRST CAUSE OF ACTION**
8 **Fifth Amendment Due Process Violation**

9 35. Mr. Faizi re-alleges and incorporates by reference, as if fully set forth
10 herein, the allegations in paragraphs 1-30 above.

11 36. The Supreme Court has long recognized that the Fifth and Fourteenth
12 Amendments refer to all “persons,” not just “citizens.” Aliens, even inadmissible or
13 removable aliens, must be afforded due process protection. *See Yick Wo v. Hopkins*,
14 118 U.S. 356, 369 (1886) (“The Fourteenth Amendment to the Constitution is not
15 confined to the protection of citizens.”). As stated by the Court, the provisions of the
16 Fourteenth Amendment “are universal in their application, to all persons within the
17 territorial jurisdiction, without regard to any differences of race, of color, or of
18 nationality” *Id.* (emphasis added).

19 37. The Supreme Court has held that “even one whose presence in this
20 country is unlawful, involuntary, or transitory is entitled to that constitutional
21 protection [of the Due Process Clauses of the Fifth and Fourteenth Amendments]”
22 *Mathews v. Diaz*, 426 U.S. 67, 75 n.7 (1976); see also *Plyler v. Doe*, 457 U.S. 202, 210
23 (1982) (“Whatever his status under the immigration laws, an alien is surely a

1 'person' in any ordinary sense of that term."); *Wong Wing v. United States*, 163 U.S.
2 228, 238 (1896) ("Persons within the territory of the United States... even aliens...
3 [may not]... be deprived of life, liberty or property without due process of law.").

4 38. As there is no final order of removal, and there doesn't appear to be
5 one in the reasonably foreseeable future, Mr. Faizi may not be removed from the
6 United States. His removal is not reasonably foreseeable, and his detention no
7 longer serves any legitimate purpose under the INA.

8 39. In *Kydyrali v. Wolf*, 499 F. Supp. 3d 768 (S.D. Cal. 2020), a judge in this
9 District granted habeas relief in a substantially similar case, applying a six-factor
10 balancing test first articulated in *Banda v. McAleenan*, 385 F. Supp. 3d 1099 (W.D.
11 Wash. 2019), which considers: (1) total length of detention to date; (2) likely
12 duration of future detention; (3) conditions of detention; (4) delays in the removal
13 proceedings caused by the detainee; (5) delays in the removal proceedings caused
14 by the government; and (6) the likelihood that the removal proceedings will result
15 in a final order of removal. The court determined that prolonged detention, when
16 considered alongside other due process concerns, can rise to the level of a
17 constitutional violation warranting release. *Kydyrali*, 499 F. Supp. 3d at 773.

18 40. Applying the Banda six-factor framework here supports granting Mr.
19 Faizi's petition.

20 41. The final factor—finality—strongly supports the grant of this habeas
21 petition and request for a bond hearing. Mr. Faizi is statutorily eligible to apply for
22 asylum, and until that application is finally adjudicated, he cannot be removed from
23

1 the United States. Thus, the only prospect for removal from the United States would
2 be a speculative, and not factually unsupported prospect of removal to a third
3 country. Although Mr. Faizi has resided in Russia while he was attending university,
4 he was not provided with Russian citizenship and he was not firmly resettled there.

5 42. All delays in this case are attributable to the government, and none
6 whatsoever are attributable to Mr. Faizi. He promptly applied for asylum at the
7 border, he has timely attended all of his interviews and court hearings. He has never
8 requested any continuances in his case and has retained counsel at a very early
9 stage of his case to represent him. His individual hearing was initially scheduled for
10 July 10, 2025, it was then rescheduled to August 26, 2025, and his case was
11 reassigned to a different IJ. Then on that date of his rescheduled hearing, his case
12 was rescheduled yet once again by the immigration court, and when his case was
13 finally heard on September 4, 2025, it was not completed as and then continued
14 again to December 19, 2025, due to the fact that the IJ heard another matter prior to
15 his case, leaving very little time for Mr. Faizi to present his entire case, and for the
16 government to cross-examine him.
17

18 43. Mr. Faizi has now been detained by ICE for more than ten months since
19 his arrival in the United States on December 26, 2025. At his next scheduled hearing,
20 he will have been detained for over a year. This period is well beyond the
21 presumptively reasonable six-month period set forth in Zadvydas, 533 U.S. at 701.
22 Courts consistently find detention beyond this threshold triggers due process
23 scrutiny. See Kydrali, 499 F.Supp. 3d at 774–75.

1 44. Conditions of confinement also raise constitutional concerns as the
2 medical treatment available at the Otay Mesa Detention Center is not adequate to
3 address Mr. Faizi's health conditions.

4 45. Mr. Faizi poses no risk of flight and no danger to the community. He has
5 no criminal history, has demonstrated compliance with all prior immigration
6 requirements, and has community support in the United States.

7 46. Mr. Faizi's continued detention without a tenable justification violates
8 his Fifth Amendment right to due process.

9
10 **PRAYER FOR RELIEF**

11 Mr. Faizi asks this Court to grant the following relief:

12 1. Issue a Writ of Habeas Corpus ordering Respondents to release
13 Mr. Faizi from custody immediately;

14 2. Declare the continued detention of Mr. Faizi without a tenable
15 justification a violation of the Due Process Clause of the U.S. Constitution;

16 3. Alternatively, order an immediate bond hearing before a neutral
17 decisionmaker where DHS bears the burden of justifying P Mr. Faizi's
18 continued detention by clear and convincing evidence and where
19 alternatives to detention and Mr. Faizi's ability to pay a bond are
20 considered

21 4. Order Respondents to show cause why Mr. Faizi is being subjected
22 to unlawful and unconstitutional detention; and

23 5. Grant any other relief that may be fit and proper.

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3 Dated: November 2, 2025

Respectfully submitted,

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5 By: /s/ Bashir Ghazialam
6 Bashir Ghazialam

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10 Attorney for Petitioner

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VERIFICATION PURSUANT TO 28 U.S.C. 2242

I am submitting this verification on behalf of the Petitioner because I am Petitioner's attorney. I have discussed with the Petitioner the events described in the Petition. Based on those discussions, I hereby verify that the factual statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Executed on this November 2, 2025, in San Diego, California.

/s/ Bashir Ghazialam
Bashir Ghazialam
Attorney for Petitioner